

# HOUSE BILL No. 1298

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-4.5.

**Synopsis:** Abandoned railroad corridors. Provides that certain statutes are applicable to the establishment of a recreational trail, regardless of: (1) when any part of the corridor was abandoned as a railroad right-of-way; (2) when the responsible party acquired title or a right to use any part of the corridor; or (3) whether the corridor is not included as part of the state's transportation plan or trail system plan or not funded by the state trail program. Provides that a recreational trail operated in violation of certain statutes is a public nuisance. Provides that a governmental entity may not operate or participate in the operation of a recreational trail in violation of certain statutes. Authorizes a taxpayer to seek an injunction to prevent a governmental entity from participating in a recreational trail that is operated in violation of the statutes. Requires a responsible party to include in the required filing the estimated dates of completion and operation of the trail, certain property tax information, and evidence of financial responsibility. Establishes a procedure for decommissioning a recreational trail. Establishes a procedure for dissolving a corridor that is not being used as a recreational trail.

**Effective:** Upon passage; July 1, 2004.

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**Friend, Grubb**

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January 15, 2004, read first time and referred to Committee on Interstate and International Cooperation.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1298

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-4.5-6-0.1 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: **Sec. 0.1. (a) This chapter applies to the use of a**  
4       **corridor for a recreational trail, regardless of when any of the**  
5       **following occurred:**

6               (1) **Abandonment of any part of a corridor as a railroad**  
7               **right-of-way.**

8               (2) **Acquisition by the responsible party of:**

9                       (A) **title to any part of a corridor; or**

10                      (B) **the right to use any part of a corridor.**

11       (b) **This chapter applies to the use of a corridor for a**  
12       **recreational trail even if the corridor is not:**

13               (1) **included as a part of:**

14                      (A) **the Indiana department of transportation's**  
15                      **comprehensive transportation plan; or**

16                      (B) **the department of natural resources's trail system**  
17                      **plan;**



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under IC 8-4.5-3; or

(2) funded or supported under the program.

SECTION 2. IC 8-4.5-6-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 0.3. A recreational trail operated in violation of this chapter is a public nuisance and may be abated under IC 32-30-6.**

SECTION 3. IC 8-4.5-6-2, AS AMENDED BY P.L.158-1999, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Before a corridor in any part of a county may be converted for use as a recreational trail, a responsible party must file the information required by section 3 of this chapter with the following:

(1) The department of natural resources.

(2) If any part of the recreational trail is intended to be located in a municipality, with the executive of the municipality.

(3) If any part of the recreational trail is intended to be located on property not within a municipality, with the county executive of any county in which the recreational trail is intended to be located.

**(b) A corridor may not be used for a recreational trail until the requirements set forth in section 3 of this chapter have been satisfied with respect to the corridor.**

SECTION 4. IC 8-4.5-6-3, AS AMENDED BY P.L.158-1999, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A responsible party must file the following information under section 2 of this chapter:

(1) A description and map of the proposed recreational trail. The information filed under this subdivision must identify the following:

(A) The properties for which the responsible party has secured the legal right to use as a recreational trail.

(B) The properties for which the responsible party has not, at the time of the filing, secured the legal right to use as a recreational trail.

(2) The name and address of the responsible party. If the responsible party is not an individual, the following information about the responsible party must also be included:

(A) If the responsible party is a governmental entity, the following:

(i) The name and address of the individual or body responsible for the administration of the governmental entity.

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(ii) The name, address, and head of any agency of the governmental entity that will be responsible for the operation of the recreational trail.

(B) If the responsible party is a corporation of any kind, the officers of the corporation and the address at which legal documents for the corporation may be served.

(C) If the responsible party is a partnership of any kind, the names and addresses of all of the partners.

(D) If the responsible party is any other kind of entity, the name and address of each individual who satisfies the following:

(i) The individual belongs to or is affiliated with the entity.

(ii) The individual has some responsibility for the organization or governance of the entity.

(3) A project concept statement for the recreational trail, including a location map, cross-section, and sketch of the project, detailed enough to generate project cost estimates. The proposed project is not required to be designed before filing, but the concept must be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.

**The project concept statement must include a statement of the estimated dates of completion and the beginning of operation of the recreational trail.**

(4) An environmental impact statement, if required by law.

(5) An itemized cost estimate for the total project showing for each item the cost and funding source.

(6) Expenses, including personnel costs, costs of goods and services, contractual services, equipment, utilities, travel, and taxes. The information provided under this subdivision must specifically show expenses for:

(A) trail security;

(B) fencing;

(C) maintenance; and

(D) drainage.

(7) A trail operation agreement under which the responsible party agrees to operate the recreational trail. The trail operation agreement must provide that the responsible party shall grant easements to persons who own adjacent property on both sides of the recreational trail permitting those persons to cross the trail in a reasonable fashion given the use of the adjacent property. The following may require inclusion of other provisions in the trail operation agreement considered advisable:

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(A) The department of natural resources.

(B) The executive of a county if an ordinance of the legislative body of the county is required to authorize the recreational trail under this chapter.

(C) The executive of a municipality if an ordinance of the legislative body of the municipality is required to authorize the recreational trail under this chapter.

**(8) If any part of the trail is or will become exempt from property taxes, the following information:**

(A) A description of each parcel that is part of the trail, as identified in the county's property tax records.

(B) The assessed value of each parcel.

(C) The date the exemption for each parcel was granted, if the parcel is currently exempt from property taxes.

(D) The basis for the exemption for each parcel.

**(9) If the responsible party is not a governmental entity, evidence of financial responsibility. The evidence of financial responsibility must demonstrate that the responsible party has the resources to maintain and operate the trail as required by this article. The trail operation agreement must specify the form and amount of the evidence of financial responsibility that is required under this subdivision. The responsible party must maintain the evidence of financial responsibility until the recreational trail is decommissioned under IC 8-4.5-7.**

SECTION 5. IC 8-4.5-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. **(a)** A governmental entity shall determine that the requirements for approval of a recreational trail under this chapter have been satisfied before the governmental entity may do either of the following:

(1) Participate in the operation of a recreational trail.

(2) Spend or grant money under its control for a recreational trail.

**(b) A governmental entity may not operate or participate in the operation of a recreational trail that is in violation of this chapter.**

**(c) A taxpayer who lives within the territory of a governmental entity has standing to seek an injunction to prevent the governmental entity from doing either of the following:**

(1) Operating or participating in the operation of a recreational trail that is in violation of this chapter.

(2) Spending or granting money under the governmental entity's control for a recreational trail that is in violation of this chapter.

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SECTION 6. IC 8-4.5-7 IS ADDED TO THE INDIANA CODE AS  
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
1, 2004]:

**Chapter 7. Decommissioning a Recreational Trail**

**Sec. 1. This chapter applies to the use of a corridor for a recreational trail, regardless of when any of the following occurred:**

- (1) Abandonment of any part of the corridor as a railroad right-of-way.**
- (2) Acquisition by the responsible party of:**
  - (A) title to any part of the corridor; or**
  - (B) the right to use any part of the corridor.**

**Sec. 2. (a) Any of the following may file a petition with the department of natural resources to decommission a recreational trail:**

- (1) The responsible party, for any reason.**
- (2) The board, on behalf of the state. The board may seek decommissioning of the recreational trail for any of the following reasons:**
  - (A) The corridor is needed for a transportation use that the board considers more important than use for a recreational trail.**
  - (B) The responsible party is in material breach of the trail operation agreement.**
  - (C) The responsible party has failed to file the information required by IC 8-4.5-6-3.**
- (3) The county legislative body, for any part of the recreational trail that passes through the county other than through a municipality, for any of the following reasons:**
  - (A) The responsible party is in material breach of the trail operation agreement.**
  - (B) The responsible party has failed to file the information required by IC 8-4.5-6-3.**
- (4) A municipality, for any part of the recreational trail that passes through the municipality, for any of the following reasons:**
  - (A) The responsible party is in material breach of the trail operation agreement.**
  - (B) The responsible party has failed to file the information required by IC 8-4.5-6-3.**
- (5) A property owner, for any of the following reasons:**
  - (A) The responsible party is in material breach of the trail**

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operation agreement.

(B) The responsible party has failed to file the information required by IC 8-4.5-6-3.

(b) A copy of the petition required by subsection (a) must also be filed with the following:

(1) If any part of the recreational trail is located in a municipality, the executive of the municipality.

(2) If any part of the recreational trail is located on property not within a municipality, the county executive of any county in which the recreational trail is located.

(3) If the petitioner is not the responsible party, the responsible party.

(c) For purposes of this section, the responsible party's:

(1) failure to maintain the recreational trail; or

(2) abandonment of operation of the recreational trail;

is a material breach of the trail operation agreement.

Sec. 3. (a) A petition filed under section 2 of this chapter must contain the following information:

(1) The name of the petitioner.

(2) The reason the petitioner seeks decommissioning of the recreational trail.

(3) The name and address of the responsible party. If the responsible party is not an individual, the same information about the responsible party required to be filed under IC 8-4.5-6-3 must be included with this information.

(4) A description of the recreational trail. The information filed under this subdivision must identify the following:

(A) The parcels occupied by the recreational trail that the responsible party owns in fee simple.

(B) The parcels occupied by the recreational trail other than the parcels identified under clause (A). The parcels identified under this clause must include the name and address of the person that owns the fee simple title of each parcel.

The description of the recreational trail is not required to identify parcels by legal description.

(5) The proposed disposition of the parcels identified under subdivision (4).

(6) A statement of the responsible party's assets.

(7) A statement of the responsible party's liabilities relating to the recreational trail.

(8) Whether the responsible party:

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(A) is a party to any litigation concerning the trail; or  
 (B) has been put on notice of possible litigation concerning the trail.

(9) The petitioner's plan for decommissioning the trail. The plan must include the following:

(A) A description of the process to be used to clear title to real property occupied by the recreational trail.

(B) How trail liabilities should be liquidated.

(C) How trail assets should be distributed.

(D) How pending or possible litigation should be settled.

(10) A schedule for decommissioning the trail.

(b) If the petitioner is not the responsible party, the petition is adequate if the petition states any information required to be given about the responsible party to the best of the petitioner's knowledge and belief.

Sec. 4. (a) If a petition is filed under section 2 of this chapter, the department of natural resources shall file a statement in the Indiana Register under IC 4-22-7-7 not later than sixty (60) days after receiving the petition. The statement must include the following information:

(1) That a petition has been filed under section 2 of this chapter to decommission a recreational trail.

(2) The name of the recreational trail.

(3) A general statement describing the location of the recreational trail. A map showing the approximate location of the recreational trail satisfies the requirements of this subdivision.

(4) A statement that an interested person may review and copy the petition at the executive offices of the department of natural resources.

(5) A statement that a person who objects to the petition must file objections with the department of natural resources not later than ninety (90) days after the statement is published in the Indiana Register.

(b) The executive of a county or a municipality that receives a copy of a petition under section 2 of this chapter shall publish a statement under IC 5-3-1 not later than sixty (60) days after receiving the petition. The statement must include the following information:

(1) The same information described in subsection (a).

(2) A statement that an interested person may review and copy the petition at the office of the county or municipal

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executive (whichever applies).

Sec. 5. (a) If the department of natural resources does not receive an objection to decommissioning the recreational trail not later than ninety (90) days after a statement is published in the Indiana Register under section 4 of this chapter, the natural resources commission shall order that the recreational trail be decommissioned as described in the petition.

(b) The natural resources commission may make other orders it considers appropriate under the circumstances.

Sec. 6. (a) Any of the following may file with the department of natural resources an objection to decommissioning a recreational trail:

(1) The board, on behalf of the state.

(2) The executive of a county through which the recreational trail passes.

(3) The executive of a municipality through which the recreational trail passes.

(4) A property owner.

(5) A person, including the responsible party, who objects to decommissioning the recreational trail.

(b) Either of the following is a basis for filing an objection:

(1) The decommissioning plan is inadequate to assure any of the following:

(A) Orderly decommissioning of the recreational trail.

(B) Just liquidation of the assets and liabilities of the recreational trail.

(C) Protection of the interest of property owners.

(D) Protection of the public interest.

(2) The recreational trail should continue operation.

Sec. 7. If the department of natural resources receives an objection to a petition filed under section 2 of this chapter not later than ninety (90) days after the statement required under section 4 of this chapter is published in the Indiana Register, the department shall hold a proceeding under IC 4-21.5 to determine whether the recreational trail should be decommissioned.

Sec. 8. The following are entitled to become a party to a proceeding under section 7 of this chapter:

(1) A person entitled to file a petition under section 2 of this chapter.

(2) A person entitled to file an objection under section 6 of this chapter.

Sec. 9. If, in a proceeding under section 7 of this chapter, any of

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the following is found to exist by a preponderance of the evidence, the natural resources commission shall order that the recreational trail be decommissioned as described in the petition:

(1) The corridor is needed for a transportation use that the board considers more important than use for a recreational trail.

(2) All of the following:

(A) The responsible party is in material breach of the trail operation agreement.

(B) The responsible party refuses to cure the breach or is unlikely to be able to cure the breach in a reasonable time.

(C) No other person has offered to become the responsible party.

(3) The responsible party has failed and refuses to file the information required by IC 8-4.5-6-3 within a reasonable time.

Sec. 10. If the natural resources commission is not required to order decommissioning of the recreational trail under section 9 of this chapter, the commission may order any of the following:

(1) Dismissal of the petition.

(2) That another person become the responsible party, if the commission finds that the other person is willing and able to comply with IC 8-4.5-6 and the orders of the commission in operating the recreational trail.

(3) Any other remedial action that the commission considers just under the facts found in the proceeding.

Sec. 11. A party to a proceeding under this chapter may file an action in a court with jurisdiction under IC 4-21.5 to enforce an order of the commission made under this chapter.

SECTION 7. IC 8-4.5-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

#### **Chapter 8. Dissolution of a Corridor**

Sec. 1. (a) This chapter applies to a corridor if:

(1) five (5) years have passed since the railroad has transferred substantially all of the railroad's interest in the corridor to other persons for any purpose other than railroad purposes; and

(2) a responsible party has not filed the information as required by IC 8-4.5-6-3.

(b) This chapter does not apply to a corridor used as a recreational trail, even if a responsible party has not filed the

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information as required by IC 8-4.5-6-3.

**Sec. 2.** A person who owns property adjacent to a corridor may file an action in a circuit or superior court of any county through which the corridor passes to dissolve the corridor under this chapter.

**Sec. 3.** An action under this chapter may seek to dissolve the entire corridor or dissolve only specified parts of the corridor.

**Sec. 4.** The plaintiff in an action under this chapter must give notice of the action to each of the following:

(1) All property owners who own property adjacent to that part of the corridor that the plaintiff seeks to dissolve.

(2) All persons who have an interest in the corridor, as revealed in the office of the county recorder in each county that contains a part of the corridor that the plaintiff seeks to dissolve.

(3) The board.

**Sec. 5.** Any person entitled to receive notice of the action under section 4 of this chapter is entitled to intervene as a party in the action.

**Sec. 6.** The court shall order dissolution of the corridor unless the court finds, by a preponderance of the evidence, any of the following:

(1) The conditions stated in section 1 of this chapter do not apply.

(2) A party to the action objects to dissolution of the corridor and either:

(A) the objecting party; or

(B) another person;

is willing and able to become a responsible party and file the information required by IC 8-4.5-6-3 not later than one (1) year after the court enters final judgment in the action.

(3) All of the following apply:

(A) The board objects to the dissolution of the corridor.

(B) Maintenance of the corridor is necessary for implementation of the Indiana department of transportation's comprehensive transportation plan or the department of natural resources's trail system plan.

(C) Either of the following:

(i) The Indiana department of transportation agrees to maintain the corridor.

(ii) The department of natural resources agrees to become the responsible party.

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1       **Sec. 7. If the court orders dissolution of the corridor, an owner**  
 2 **of any part of the dissolved corridor is entitled to use that property**  
 3 **consistent with the owner's interest in the property.**

4       **Sec. 8. A party to an action under this chapter is entitled to have**  
 5 **the party's interest in any part of the corridor determined as it**  
 6 **would be determined if the party had filed an action to quiet title.**

7       **SECTION 8. [EFFECTIVE UPON PASSAGE] (a) This SECTION**  
 8 **applies to a recreational trail operated on a corridor before July 1,**  
 9 **2004.**

10       **(b) The definitions in IC 8-4.5-1 apply throughout this**  
 11 **SECTION.**

12       **(c) Notwithstanding IC 8-4.5, as amended by this act, a person**  
 13 **who:**

14           **(1) was operating a recreational trail before July 1, 2004; and**

15           **(2) has not complied with IC 8-4.5, as amended by this act;**  
 16 **may satisfy the requirements of IC 8-4.5, as amended by this act,**  
 17 **without being subject to any remedial provisions of IC 8-4.5, as**  
 18 **amended by this act.**

19       **(d) This SECTION expires July 1, 2005.**

20       **SECTION 9. An emergency is declared for this act.**

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